

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.9972 OF 2004

Shri Chotelal Bansi Balmiki

Petitioner

Vs.

M/s.Padumjee Pulp & Paper
Mills Ltd. & anr.

Respondents

Mr.V.D.Raut for petitioner.

CORAM: B.H.MARLAPALLE,J.
July 14, 2005.

ORAL ORDER:

1. Heard Mr.Raut, the learned counsel for the petitioner who is aggrieved by the judgment and order dated 18-3-2004 rendered by the Industrial Court of Maharashtra at Pune in Complaint (ULP) No. 98 of 2001. The said complaint came to be dismissed.

2. The petitioner had joined the respondent - company as a sweeper on 26-6-1973 and an employment application form was filled in regarding his personal details like name, address, permanent address, educational qualifications and the date of birth etc. When this form was filled in on 26th June 1973 his age was declared as 31 years and his date of birth came to be recorded as 13-4-1941. On 10th February 2001 he was called by the Personnel Manager of the company and informed that he would retire on reaching

the age of superannuation of 60 years on 13-4-2001. He was again informed to the same effect on 27-2-2001 and finally the order dated 11-3-2001 was issued informing him that he would retire one month later. This order was sent by registered post A.D. but the petitioner refused to accept the same and finally on 12-4-2001 he was retired at the end of the working hours on reaching the age of superannuation. He approached the Industrial Court and challenged the order of retirement stating that his date of birth was not 13-4-1941 but it was 26-4-1948. This claim was made on the basis of a school leaving certificate at Exhibit U-13, village panchayat certificate at Exhibit U-19 and the medical certificate at Exhibit U-20. The employer filed the written statement and contested the claim made by the complainant that his date of birth was 26th April 1948 and the date of birth recorded by the company was erroneous. The Industrial Court was persuaded to accept the contents of the employment form to be genuine more so because in the said form the name of Mr.Durgaprasad Balmik, resident of Bajirao Chawl, Thelgaon, Poona - 33 was shown to be a person to be informed in emergency and in the cross-examination before the Industrial Court the petitioner accepted that the said contents were

correct. He also stated that Mr.Durgaprasad Balmik had accompanied him to the company on the day when the said employment form was filled in. The Industrial Court, therefore, accepted the contentions of the company that the form was filled in by the company official as per the information furnished by the petitioner or by his relation/friend as per the information furnished by him.

3. Even otherwise it was noted that the petitioner had proceeded on leave from 13-1-2001 to 22-1-2001 to his native place in Uttar Pradesh. On 10th February 2001 when he was called and informed by the Personnel Manager that he would stand retired with effect from 13-4-2001, he submitted representation on 12-2-2001 accompanied by the school leaving certificate at Exhibit U-13 for the first time. Never in the past before this particular date the petitioner had submitted such a claim or made an application praying for correction of his date of birth. The said certificate was dated 19-1-2001 and, therefore, the Industrial Court drew an inference that the certificate was obtained when the petitioner was on leave. In addition the school master was not examined to prove this certificate and it was not

known whether it was issued by a Government school or a private school or a school run by any of the local self-government bodies. The document was, therefore, discarded. It is well settled that the claim for correction of date of birth submitted at the end of the career would not be entertained and the employer did not commit any act of unfair labour practice in discarding the claim made by the petitioner on the basis of such a school leaving certificate.

4. In support of Exhibit U-20, the medical certificate, no doctor was examined before the Industrial court and same was the case with the certificate issued by the village panchayat at Exhibit U-19. The onus was on the petitioner to prove these documents. On the other hand the company placed on record the insurance policy at Exhibit C-23 and in the same the petitioner's date of birth was shown as 13-4-1941. On the face of this evidence the Industrial Court accepted the contents of the employment form to be correct and discarded the allegations of unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 against the employer. The view taken by the Industrial Court is

a possible view on the basis of the evidence and it cannot be termed as an erroneous view leave alone patently erroneous warranting interference under Article 227 of the Constitution. The challenge to the impugned order of the Industrial Court must, therefore, fail. Petition is rejected summarily.

(B.H.MARLAPALLE,J.)